IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 592 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASS. CO. LTD. - Appellant(s)
Versus
DALVADI MOHANBHAI S & 6 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR BALWANTSINH SOLANKI for MR ASHISH M DAGLI for Defendant(s) : 1 - 3.
None for Defendant(s) : 4 - 6.
None for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/08/2007

ORAL JUDGMENT

1. Shri Rajni H. Mehta, learned counsel for the appellant; Shri Balwantsinh Solanki learned

counsel for the respondents no. 1 to 3 under the authority of Shri Ashish M. Dagli; none for the respondents no. 4 to 6 though served; none for the respondent no.7 though name of Ms. Shital Patel is shown. I proceed exparte against the respondents who are absent.

2. The Insurance Company, being aggrieved by the award dated 11.4.83 passed by the learned Motor Accidents Claims Tribunal [Main], Surendranagar in M.A.C. Petition No. 230 of 1982, is before this Court with a submission that the Tribunal was unjustified in holding the Insurance Company liable against the claim awarded in favour of the claimants.

3. Placing reliance upon the judgment of the Supreme Court in the matter of New India Assurance Company Limited v. Vedwati [2007 [3] SCALE 397], it is submitted that in case of a passenger in a goods vehicle, unless the insured proves that by making payment of extra premium risk of such passenger was covered, the Insurance Company would not be liable. Shri Solanki, learned counsel for the respondents no.

1 to 3, however, submitted that the learned Tribunal was justified in holding the appellant Insurance Company responsible.

4. In para-14 of the said judgment, the Supreme Court has observed as under:-

> *"The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor."*

5. From a perusal of the observations, it would clearly appear that the owner is not under any statutory liability to get risk of a passenger in goods vehicle covered. If he wants to avoid liability, then, he has to show to the Court that on payment of the extra premium, such risk of the passenger was undertaken to be covered by the Insurance Company.

6. In view of the said judgment of the Supreme

Court and in absence of any evidence on the part of the claimant or on the part of the driver of the vehicle that the Insurance Company had covered extra risk, I must set aside the award made against the interest of the Insurance Company. The award is accordingly set aside. If the Insurance Company has already deposited the amount with the Lower Court and the same is lying in deposit with the said Court, then, the Insurance Company would be entitled to refund of the said amount. They may make an application to the Tribunal for refund. In such case, the claimant would be entitled to recover the unpaid claim amount from the owner and driver of the vehicle. However, in case, the amount has already been paid to or has been withdrawn by the claimants, then, the Insurance Company would be entitled to recover the said amount from the owner and the driver of the offending vehicle. The Insurance Company would be entitled to 6% interest per annum on the amount deposited by them from the date of the deposit till the date of realization.

7. The appeal, to the extent, indicated above, is allowed. No costs.

[R.S. GARG, J.]

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